HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
40 Paterson Street, P.O. Box 480
New Brunswick, NJ 08903
(732)545-4717
Attorneys for Defendants, Ptl. James Feister and City of New Brunswick

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY

Plaintiffs, MICHAEL BOSWELL, an Incapacitated Person by his Guardian Ad Litem, ETHEL BOSWELL, and ETHEL BOSWELL, Individually, vs. Defendants, STEVE EOON, KIRSTEN BYRNES, CHRISTINA EICKMAN, PTL. JAMES FESITER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK; and JOHN DOES (#1 thru #5)	CIVIL ACTION NO. 3:08-cv-5098(GEB-LHG) **ANSWER TO SECOND AMENDED COMPLAINT, SEPARATE DEFENSES, NOTICE OF ALLOCATION, REQUEST FOR DISCOVERY, DESIGNATION OF TRIAL COUNSEL, JURY DEMAND, REQUEST FOR STATEMENT OF DAMAGES** **ELECTRONICALLY FILED**

These Defendants, Ptl. James Feister and City of New Brunswick, by way of Answer to Plaintiffs' Second Amended Complaint, say:

FIRST COUNT
(State Law Negligence Claim)

1. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 1.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 3.

4. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 4.

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Attorneys at Law
40 Paterson Street
P.O. Box 480
New Brunswick, NJ

5. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 5.

6. These Defendants make no answer as the allegations contained in this paragraph do not apply to these Defendants, however deny the allegations of this paragraph as they may be deemed related to these Defendants.

7. These Defendants deny the allegations contained in paragraph 7.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

SECOND COUNT
(State Law Negligence Claim)

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

7. These Defendants deny the allegations contained in paragraph 7.

8. These Defendants deny the allegations contained in paragraph 8.

9. These Defendants deny the allegations contained in paragraph 9.

10. These Defendants deny the allegations contained in paragraph 10.

11. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 11.

12. These Defendants deny the allegations contained in paragraph 12.

13. These Defendants deny the allegations contained in paragraph 13.

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Doukas, LLP
torneys at Law

I Paterson Street
O Box 480
ew Brunswick, NJ

14. These Defendants deny the allegations contained in paragraph 14.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

THIRD COUNT
(Civil Rights Claim Under 42 U.S.C. Sec. 1983)

1. This Defendant repeats and reiterates each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

7. These Defendants deny the allegations contained in paragraph 7.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

FOURTH COUNT
(Civil Rights Claim Under 42 U.S.C. Sec. 1983)

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

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oran, Dunst
Doukas, LLP
orneys at Law

Paterson Street
O Box 480
ew Brunswick, NJ

FIFTH COUNT
(New Jersey Civil Rights Claim Under N.J.S.A. 10:6-2)

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

7. These Defendants deny the allegations contained in paragraph 7.

8. These Defendants deny the allegations contained in paragraph 8.

9. These Defendants deny the allegations contained in paragraph 9.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

SIXTH COUNT

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

WHEREFORE, these Defendants, Ptl. James Feister and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

FIRST SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by the Plaintiffs' sole negligence.

SECOND SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by the Plaintiffs' contributory negligence.

...agland, Longo,
...ran, Dunst
Doukas, LLP
...orneys at Law

... Paterson Street
... Box 480
...w Brunswick, NJ

THIRD SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by third persons over whom these Defendants had no control.

FOURTH SEPARATE DEFENSE

The incident which forms the basis of this litigation and which allegedly caused the injuries and damages to Plaintiffs was proximately caused or contributed to by the fault of third parties not parties to this suit. The responsibility of these Defendants and the right of Plaintiffs to recover in this litigation can only be determined after the percentages of responsibility of all parties to this litigation have been determined. Accordingly, these Defendants seek an adjudication of the percentage of fault of the Plaintiffs and each and every person whose fault contributed to this incident.

FIFTH SEPARATE DEFENSE

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

SIXTH SEPARATE DEFENSE

The Plaintiffs' cause of action is barred by the applicable Statute of Limitations and/or Repose.

SEVENTH SEPARATE DEFENSE

These Defendants did not violate any duty owed to the Plaintiffs under common law, statute, regulations or standards.

EIGHTH SEPARATE DEFENSE

These Defendants' conduct was not negligent.

NINTH SEPARATE DEFENSE

These Defendants' conduct was not the proximate cause of the Plaintiffs' alleged damages.

oagland, Longo,
oran, Dunst
Doukas, LLP
orneys at Law

Paterson Street
) Box 480
ew Brunswick, NJ

TENTH SEPARATE DEFENSE

At the time and place aforesaid, Plaintiffs and/or Co-Defendant(s) were negligent, barring or limiting recovery in whole or in part, and these Defendants plead the Comparative Negligence Statute as to all parties.

ELEVENTH SEPARATE DEFENSE

The alleged damages complained of were due to unavoidable circumstances and causes beyond the control or fault of these Defendants.

TWELFTH SEPARATE DEFENSE

These Defendants have no policy, scheme, practice nor custom to violate the constitutional rights of any of their citizens, irrespective of their ethnic backgrounds, nor do these Defendants have a custom, policy, scheme or practice to tolerate or permit violation of constitutional rights.

THIRTEENTH SEPARATE DEFENSE

These Defendants deny the allegations of improper conduct as set forth in the Plaintiffs' Complaint; however, the alleged misconduct does not rise to the level of a Constitutional violation.

FOURTEENTH SEPARATE DEFENSE

These Defendants, in carrying out their duties, acted in good faith and without malicious intent to deprive Plaintiffs of their Constitutional rights.

FIFTEENTH SEPARATE DEFENSE

No malicious intent of causing a deprivation of Plaintiffs' Constitutional rights has been factually set out against these Defendants.

SIXTEENTH SEPARATE DEFENSE

Plaintiffs have failed to exhaust all applicable administrative remedies and are therefore barred from recovery.

SEVENTEENTH SEPARATE DEFENSE

These Defendants reserve the right to apply to this Court for the imposition of sanctions against the Plaintiffs and counsel, pursuant to Rule 11, and to make an application for counsel fees

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

Paterson Street
O Box 480
ew Brunswick, NJ

and costs of suit, pursuant to Section 1988 of Title 42 of the United States Code Annotated on the basis that the within cause of action is without merit, is frivolous and has been instituted by the Plaintiffs in bad faith and with the intent to harass these Defendants and to cause them to incur great expenses in defense of same, all to these Defendants' damage.

EIGHTEENTH SEPARATE DEFENSE

Without admitting Plaintiffs' civil rights were violated, these Defendants aver that in any event these Defendants are shielded from liability for civil damages because the alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

NINETEENTH SEPARATE DEFENSE

At all times relevant hereto, these Defendants were protected by a qualified privilege and as such the Plaintiffs are barred from any recovery herein.

TWENTIETH SEPARATE DEFENSE

Without admitting Plaintiffs' civil rights were violated, Plaintiffs' claims are not actionable inasmuch as there is no evidence or allegation that the alleged governmental misconduct was the result of deliberate indifference by these Defendants.

TWENTY-FIRST SEPARATE DEFENSE

At no time relevant to this litigation was the Plaintiff deprived of life, liberty or property thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

TWENTY-SECOND SEPARATE DEFENSE

At no time relevant to this litigation did the Plaintiffs sustain any violation of their civil rights pursuant to a governmental policy or custom thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

ɔagland, Longo,
ɔran, Dunst
Doukas, LLP
iorneys at Law

Paterson Street
) Box 480
ɘw Brunswick, NJ

TWENTY-THIRD SEPARATE DEFENSE

At all times relevant to this litigation, these Defendants acted in good faith and entertained an honest, reasonable belief that these Defendants' actions were reasonable and necessary thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

TWENTY-FOURTH SEPARATE DEFENSE

If the Plaintiff suffered damages, the same were caused by the negligence of the Co-Defendants and any recovery to which the Plaintiff would otherwise be entitled as against these Defendants must be reduced by the application of the standard of comparative negligence set forth in N.J.S.A. 2A:15-5.1 et seq.

TWENTY-FIFTH SEPARATE DEFENSE

If the Plaintiff suffered injuries or damages, the same were caused by the Co-Defendant(s), either jointly, severally or in the alternative, and any recovery to which the Plaintiff would otherwise be entitled as against these Defendants must be reduced by the application of the standard of comparative negligence set forth in N.J.S.A. 2A:15-5.1, et seq.

TWENTY-SIXTH SEPARATE DEFENSE

If the Plaintiff suffered damages, the same were caused by the negligence, breach of contract or breach of express or implied warranty of the Co-Defendant(s), jointly, severally or in the alternative.

TWENTY- SEVENTH SEPARATE DEFENSE

These Defendants' conduct did not deprive Plaintiffs of rights, privileges or immunities secured by the Constitution or laws of the United States.

TWENTY- EIGHTH SEPARATE DEFENSE

Plaintiffs fail to establish a prima facie case of violation of 42 U.S.C. 1983.

TWENTY-NINTH SEPARATE DEFENSE

There was no intentional substantive conspiracy to violate Plaintiffs' Constitutional rights.

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

Paterson Street
O Box 480
ew Brunswick, NJ

THIRTIETH SEPARATE DEFENSE

These Defendants are entitled to the defense of qualified immunity.

THIRTY-FIRST SEPARATE DEFENSE

Any injury occurring to the Plaintiff was the direct and proximate result of the Plaintiff's own conduct.

THIRTY-SECOND SEPARATE DEFENSE

These Defendants, if involved at all, acted within the scope of their authority and in good faith in the performance of his duties.

THIRTY-THIRD SEPARATE DEFENSE

These Defendants, if involved at all, acted reasonably and properly under the circumstances.

THIRTY-FOURTH SEPARATE DEFENSE

All of the actions of these Defendants were performed in good faith and in the performance of their duties, and they are, therefore, entitled to qualified immunity.

THIRTY-FIFTH SEPARATE DEFENSE

Any claim of Plaintiff is the direct result of actions of other unnamed Defendants over whom these Defendants have no control.

THIRTY-SIXTH SEPARATE DEFENSE

These Defendants acted on reasonable grounds and without malice and, therefore, are not answerable to the Plaintiff in damages.

THIRTY-SEVENTH SEPARATE DEFENSE

This matter is a frivolous suit and these Defendants should be entitled to damages for defending same.

THIRTY-EIGHTH SEPARATE DEFENSE

These Defendants deny that any of their actions were malicious or reckless.

aagland, Longo,
oran, Dunst
Doukas, LLP
orneys at Law

Paterson Street
Box 480
w Brunswick, NJ

THIRTY-NINTH SEPARATE DEFENSE

These Defendants could not and did not foresee the risks of the damages Plaintiff alleges.

FORTIETH SEPARATE DEFENSE

The business of these Defendants is in the public interest, convenience, and necessity, and it is operated and conducted in compliance with the law.

FORTY-FIRST SEPARATE DEFENSE

These Defendants deny that Plaintiff has suffered any losses or damages; in any event, any losses or damages sustained by Plaintiff are de minimis, remote, speculative, and/or transient and, hence, are not cognizable at law.

FORTY-SECOND SEPARATE DEFENSE

Plaintiff failed to mitigate any damages allegedly sustained by him.

FORTY-THIRD SEPARATE DEFENSE

Plaintiff's Complaint is barred by the Doctrine of Collateral Estoppel.

FORTY-FOURTH SEPARATE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the Doctrine of Waiver.

FORTY-FIFTH SEPARATE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the Doctrine of Estoppel.

FORTY-SIXTH SEPARATE DEFENSE

These Defendants did not misuse the police process.

FORTY-SEVENTH SEPARATE DEFENSE

These Defendants did not fail to instruct, supervise, control & discipline.

FORTY-EIGHTH SEPARATE DEFENSE

These Defendants did not engage in extreme and outrageous conduct.

FORTY-NINTH SEPARATE DEFENSE

There was insufficiency of process as to these Defendants.

FIFTIETH SEPARATE DEFENSE

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

l Paterson Street
) Box 480
ew Brunswick, NJ

There was insufficiency of service of process as to these Defendants.

FIFTY-FIRST SEPARATE DEFENSE

The Court lacks jurisdiction over the person of these Defendants.

FIFTY-SECOND SEPARATE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

FIFTY-THIRD SEPARATE DEFENSE

Venue of this action is improper and these Defendants reserve the right to move for transfer.

FIFTY-FOURTH SEPARATE DEFENSE

These Defendants reserve the right to move for a dismissal of the Plaintiff's Complaint

FIFTY-FIFTH SEPARATE DEFENSE

These Defendants are immune from suit by virtue of the applicable Statutes of the State of New Jersey.

FIFTY-SIXTH SEPARATE DEFENSE

This action is barred by reason of the substantive provisions of N.J.S.A. 59:1-1 et seq., providing for immunity to these Defendants under the facts and circumstances as pleaded.

FIFTY-SEVENTH SEPARATE DEFENSE

These Defendants expressly and specifically reserve and implead any and all rights, remedies and immunities pursuant to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and, as such, the Plaintiff is barred from recovery.

FIFTY-EIGHTH SEPARATE DEFENSE

These Defendants assert all of the immunities, rights and privileges afforded by the Tort Claims Act, N.J.S.A. 59:1-1 et seq., including but not limited to Sections 2-2, 2-3, 2-6, 2-7, 3-1, 3-2, 3-3, 3-4, 3-5, 3-7, 3-8, 3-10, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 5-4, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-10, 9-2, 9-3, 9-4 and 9-6.

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

Paterson Street
O Box 480
ew Brunswick, NJ

FIFTY-NINTH SEPARATE DEFENSE

This action is barred by reason of the procedural provisions of N.J.S.A. 59:1-1 et seq., in that Plaintiff did not comply with the preconditions to filing suit.

SIXTIETH SEPARATE DEFENSE

The Plaintiff failed to properly comply with the notice provisions of the Tort Claims Act.

SIXTY-FIRST SEPARATE DEFENSE

Plaintiff is barred from recovery for failure to present and otherwise file a Notice of Claim within the time, form and place as required by Chapter 8 of Title 59 of the New Jersey Revised Statutes and, as such, these Defendants are immune from liability and the Plaintiff is barred from recovery.

SIXTY-SECOND SEPARATE DEFENSE

The intoxication of the Plaintiff was the proximate cause of any and all injuries suffered by the Plaintiffs.

SIXTY- THIRD SEPARATE DEFENSE

The Plaintiffs, prior to the incident, had consumed alcoholic beverages or drugs to such an extent that Plaintiffs' physical and mental faculties were impaired, which impairment was the proximate cause of the incident and subsequent injuries.

SIXTY-FOURTH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick specifically deny being liable for punitive damages.

SIXTY-FIFTH SEPARATE DEFENSE

Plaintiffs' claim for punitive damages is unconstitutional.

SIXTY-SIXTH SEPARATE DEFENSE

Plaintiffs' claim for punitive damages violates these Defendants, Ptl. James Feister and City of New Brunswick' right to protection for "excessive fines" as provided in the Eighth Amendment of the United States Constitution and the Constitution of the State of New Jersey and violates these

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

I Paterson Street
) Box 480
ew Brunswick, NJ

Defendants, Ptl. James Feister and City of New Brunswick' right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of New Jersey. Therefore, Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

SIXTY-SEVENTH SEPARATE DEFENSE

Plaintiffs' claim for punitive damages violates these Defendants, Ptl. James Feister and City of New Brunswick' rights to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of New Jersey and, therefore, fails to state a cause of action upon which relief can be granted.

SIXTY-EIGHTH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick deny the applicability of punitive damage theories under the facts of this litigation and, in any event, deny they are so liable under said theories.

SIXTY- NINTH SEPARATE DEFENSE

Punitive damages may not be awarded against these Defendants, Ptl. James Feister and City of New Brunswick and are inappropriate and not recoverable under the facts of this case and should be dismissed.

SEVENTIETH SEPARATE DEFENSE

Pursuant to N.J.S.A. 2A:15-5.13 these Defendants, Ptl. James Feister and City of New Brunswick hereby demand a bifurcated trial as to the issues of compensatory and punitive damages.

SEVENTY-FIRST SEPARATE DEFENSE

Plaintiffs' claim for punitive damages must be dismissed because Plaintiffs cannot prove by clear and convincing evidence that these Defendants, Ptl. James Feister and City of New Brunswick' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

)agland, Longo,
)ran, Dunst
Doukas, LLP
torneys at Law

I Paterson Street
) Box 480
ɜw Brunswick, NJ

SEVENTY-SECOND SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick plead all the limitations and conditions as stated in the Punitive Damage Act, 2A:15-5.9 et seq.

SEVENTY-THIRD SEPARATE DEFENSE

There was insufficiency of process as to these Defendants, Ptl. James Feister and City of New Brunswick.

SEVENTY-FOURTH SEPARATE DEFENSE

There was insufficiency of service of process as to these Defendants, Ptl. James Feister and City of New Brunswick.

SEVENTY-FIFTH SEPARATE DEFENSE

The Court lacks jurisdiction over the person of these Defendants, Ptl. James Feister and City of New Brunswick.

SEVENTY-SIXTH SEPARATE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SEVENTY-SEVENTH SEPARATE DEFENSE

Venue of this action is improper and these Defendants, Ptl. James Feister and city of New Brunswick reserve the right to move for transfer.

SEVENTY-EIGHTH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick reserve the right to move for a dismissal of the Plaintiffs' Complaint pursuant to Rules 4:4-1 and 4:37-2.

SEVENTY-NINTH SEPARATE DEFENSE

This action is governed by the provisions of N.J.S.A. 59:1-1, et seq.

EIGHTIETH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick are immune from suit by virtue of the applicable Statutes of the State of New Jersey.

ɔagiandi, Longo,
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Doukas, LLP
:orneys at Law

I Paterson Street
ɔ Box 480
ɜw Brunswick, NJ

EIGHTY-FIRST SEPARATE DEFENSE

This action is barred by reason of the substantive provisions of N.J.S.A. 59:1-1 et seq., providing for immunity to these Defendants, Ptl. James Feister and City of New Brunswick under the facts and circumstances as pleaded.

EIGHTY-SECOND SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick expressly and specifically reserve and implead any and all rights, remedies and immunities pursuant to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and, as such, the Plaintiffs are barred from recovery.

EIGHTY-THIRD SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick assert all of the immunities, rights and privileges afforded by the Tort Claims Act, N.J.S.A. 59:1-1 et seq., including but not limited to Sections 2-2, 2-3, 2-6, 2-7, 3-1, 3-2, 3-3, 3-4, 3-5, 3-7, 3-8, 3-10, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 5-4, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-10, 9-2, 9-3, 9-4 and 9-6.

EIGHTY-FOURTH SEPARATE DEFENSE

This action is barred by reason of the procedural provisions of N.J.S.A. 59:1-1 et seq., in that Plaintiffs did not comply with the preconditions to filing suit.

EIGHTY-FIFTH SEPARATE DEFENSE

The Plaintiffs failed to properly comply with the notice provisions of the Tort Claims Act.

EIGHTY-SIXTH SEPARATE DEFENSE

Plaintiffs are barred from recovery for failure to present and otherwise file a Notice of Claim within the time, form and place as required by Chapter 8 of Title 59 of the New Jersey Revised Statutes and, as such, these Defendants, Ptl. James Feister and City of New Brunswick are immune from liability and the Plaintiffs are barred from recovery.

)agland, Longo,
)ran, Dunst
Doukas, LLP
iorneys at Law

I Paterson Street
) Box 480
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EIGHTY-SEVENTH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick are immune from any prejudgment interest in the event of judgment pursuant to Chapter 9, Section 2, of Title 59 of the New Jersey Revised Statutes.

EIGHTY-EIGHTH SEPARATE DEFENSE

These Defendants, Ptl. James Feister and City of New Brunswick are immune from liability for any damages for pain and suffering pursuant to N.J.S.A. 59:9-2(d).

CROSSCLAIMS

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, by way of Crossclaims against the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, say:

FIRST COUNT

1. Although these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, deny any liability whatsoever, they nonetheless assert that any and all injuries and damages sustained by the Plaintiffs were the proximate result of the negligence of the Co-Defendants and demand contribution from Steve Eoon, Kirsten Byrnes and Christina Eickman for the proportionate share of any and all sums that may be adjudged against these Defendants in this action.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand a judgment of contribution from the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, together with interest, attorney's fees, costs of suit, and such other relief as this Court deems appropriate and equitable.

SECOND COUNT

1. These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, repeat and reallege each and every allegation contained in the First Count as if the same were more fully set forth at length herein and made a part hereof.

…oagland, Longo,
…oran, Dunst
Doukas, LLP
…orneys at Law

…Paterson Street
…O Box 480
…ew Brunswick, NJ

2. Although these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, deny any liability whatsoever, they nonetheless assert that any and all injuries and damages sustained by the Plaintiffs were the proximate result of the negligence of Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, which negligence was primary and active, and if these Defendants are found liable to the Plaintiffs with respect to said injuries and damages, such liability resulted solely from secondary, imputed, vicarious or passive negligence, and Co-Defendants aforesaid is liable to these Defendants, by way of common law indemnification, for any and all sums which these Defendants may be required to pay in this action.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment, by way of full indemnification, against the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, for any and all sums which these Defendants may be required to pay in this action, together with interest, attorney's fees, costs of suit, and such other relief as this Court deems appropriate and equitable.

ANSWER TO ALL CROSSCLAIMS

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, by way of Answer to any and all Crossclaims, say:

These Defendants deny each and every allegation contained in the Co-Defendants Crossclaims and therefore leaves Crossclaimants to their proofs.

NOTICE OF ALLOCATION

Pursuant to R. 4:7-5(c) and Young v. Latta, 123 N.J. 584 (1991), these Defendants, Ptl. James Feister and City of New Brunswick hereby advise that if any Co-Defendant settles the within matter prior to conclusion of trial, the liability of any settling Co-Defendant shall remain an issue and these Defendants, Ptl. James Feister and City of New Brunswick shall seek an allocation of percentage of negligence by the finder of fact against such settling Co-Defendant and/or a credit

...agland, Longo,
...ran, Dunst
...Doukas, LLP
...orneys at Law

... Paterson Street
... Box 480
...w Brunswick, NJ

in favor of these Defendants, Ptl. James Feister and City of New Brunswick consistent with such allocation.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that **Craig L. Corson, Esq.** has been designated as trial counsel on behalf of Defendants, Ptl. James Feister and City of New Brunswick.

JURY DEMAND

These Defendants, Ptl. James Feister and City of New Brunswick, hereby demand a trial by jury in accordance with Federal Rule of Civil Procedure 30.

HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
Attorneys for Defendants, Ptl. James Feister and City of New Brunswick

BY:________________________
CRAIG L. CORSON

Dated: August 6, 2009

oagland, Longo,
oran, Dunst
Doukas, LLP
torneys at Law

Paterson Street
) Box 480
ew Brunswick, NJ

PROOF OF MAILING

I, **Craig L. Corson, Esq.**, hereby certify that on this date that I served via electronic mail, a true and accurate copy of the within Answer to Plaintiffs' Second Amended Complaint on behalf of Defendants, Ptl. James Feister and city of New Brunswick, to the following:

Mr. William T. Walsh
Clerk, United States District Court
Martin Luther King, Jr. Federal Building and US Courthouse
50 Walnut Street
Newark, NJ 07102

I hereby certify that on this date that I served via electronic and regular mail, a true and accurate copy of the within Answer to Plaintiff's Second Amended Complaint on behalf of Defendants, Ptl. James Feister and City of New Brunswick, to the following:

Richard Galex, Esq.
Galex Wolf, LLC
1520 Highway 130
Suite 101
North Brunswick, NJ 08902
Attorney(s) for Plaintiff,
Mr. Michael Boswell

Mario C. Colitti, Esq.
Law Offices of Baumann, Lynes & Viscomi - Somerset
399 Campus Drive, Suite 301
PO Box 6782
Somerset, NJ 08875-6782
Attorney(s) for Defendant,
Mr. Steve Eoon

Stephen R. Dumser, Esq.
Swartz Campbell, LLC
Bloom Court - Suite 101
1300 Route 73
Mount Laurel, NJ 08054
Attorney(s) for Defendants,
Ms. Kirsten Byrnes and Ms. Christina Eickman

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
Attorneys for Defendants, Ptl. James Feister and City of New Brunswick

CRAIG L. CORSON

Dated: August 6, 2009

[H]oagland, Longo,
[Mo]ran, Dunst
Doukas, LLP
[Att]orneys at Law

[4]0 Paterson Street
[P]O Box 480
[Ne]w Brunswick, NJ